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IN THE

Supreme Court of the United States

October Term, 1965
No. 487

WILLIAM MALAT and ETHEL MALAT,

Petitioners,

vs.

ROBERT A. RIDDELL, District Director of Internal Revenue,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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WILLIAM MALAT and ETHEL MALAT,

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vs.

ROBERT A. RIDDELL, District Director of Internal Revenue,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioners hereby petition this Court for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

Opinions Below.

The memorandum opinion, findings of fact and conclusions of law of the District Court [R1. 9-29] are unreported. The opinion of the Court of Appeals [R1. 44-50; Appendix, *infra*] is reported at 346 F. 2d. .....

Jurisdiction.

The judgment of the Court of Appeals was entered on May 27, 1965 [R1. 51]. The jurisdiction of this Court is based on 28 U.S.C. §1254(1).

Questions Presented.

This is a federal income tax case. A joint venture in which petitioner had an interest acquired land for development into property to be held for rental income. Failure to obtain adequate financing under one plan, and adequate financing and rezoning under a second plan, was followed by a split of the joint venturers into two irreconcilable factions, and this in turn resulted in a sale by one faction of their interests. In form the sale was a sale of the real estate by the joint venture, in part to the two members making up the other faction, and in part to a business associate of one of them. The petitioner, whose joint venture interest was in the selling faction, reported his share of the gain from the two sales as capital gain on his income tax return. That the required financing and rezoning might not be obtained was possibility of which the venturers were aware at the time of acquisition. The questions presented are:

(1) Whether property acquired by a joint venture to be developed and held for rental income, but sold, as a result of a split among the venturers, by one faction to another faction and a third party, constitutes property held by the joint venture primarily for sale to customers in the ordinary course of trade or business.

(2) Whether the term "held primarily for sale," as used in Section 1221(1), Internal Revenue Code of 1954, embraces, as a primary purpose, a thought of a taxpayer, at the time of acquisition, that he possibly may have to sell the property if, at some indefinite time in the future, it proves ultimately incapable of development for rental.

(3) Where the taxpayer's actual intent to sell arises for the first time when he enters into an agreement to sell, the property not having been previously offered or otherwise held for sale, directly or indirectly, to anyone, is the property then held primarily for sale to customers in the ordinary course of trade or business within the meaning of Section 1221(1).

Statutes Involved.

Internal Revenue Code of 1954.

Sec. 1221. Capital asset defined.

For purposes of this subtitle, the term "capital asset" means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; . . .

Statement.

Petitioner William Malat, hereinafter referred to as "taxpayer," was a member of Louis Lesser Enterprises, Ltd., a partnership, hereinafter referred to as "Lesser." The nature of Lesser's business was, as the court below characterized it, "primarily that of development of real estate for rental."

In 1953 Lesser and four individuals acquired a parcel of land for development for rental income. At the outset they had in mind a single-mortgage development, requiring no division of the property into separate par-

cels. They secured the necessary zoning changes but failed to get adequate financing. In this respect, as the court below put it, they first sought the assistance of the Federal Housing Administration but found that they could not secure FHA guarantees on terms acceptable to them. They next sought conventional financing. Their efforts, through mortgage brokers and savings and loan associations, failed.

The venturers then changed their plan from a single-mortgage project to individual 4-, 6-, and 8-unit apartment buildings, each one with a separate mortgage, but only on an inner parcel of the land, the frontage parcels, two of them, being reserved for commercial use. A map for that purpose covering the inner parcel was filed and approved. However, the rezoning of the frontages for commercial use could not be secured. Also, despite all efforts, the venturers were still unable to secure financing.

They were now faced with interest charges on their trust deed and with the cost of street improvements and like expenses. They thereupon proceeded to sell the apartment lots in the inner parcel. The gain which the venturers realized on those sales is not here involved. Our sole concern is with the gain realized on the sale of the two frontage parcels.

These frontage parcels were retained by the joint venture, still in hope that commercial zoning could be secured as to them. The prospects of rezoning remained discouraging and a rift developed among the venturers. Two of the individuals wanted to get out, while the other two wished to hold on.

Lesser joined with the individuals who wanted to get out. As the trial court found, the rift "resulted in acri-

mony which made further business relations as partners unpleasant." [R1. 27]. Eventually those who wished to get out, including Lesser, sold out their interests. The sale took the form of a sale of the property by the joint venture, in part to the two individuals who wished to remain [R1. 27-8], and in part to a business associate of one of them [R1. 28; R3. 133, lines 10-12].

Immediately at the close of trial the trial court summarized its view of the evidence as follows [R3. 251, lines 1-15]:

> "The Court: That is the way it appears to me, that the facts in this case wind up. They purchased it with the intent of developing it. They didn't develop it and the reason they didn't is because of this dispute.
>
> Now, I am satisfied that the mortgage problem and the zoning problem had something to do with it, but they could have held it and I think they probably would have held it, but the reason here, I think, was the dispute. They wanted to get rid of it and they didn't want to fool with it any more and have these complications.
>
> But that still doesn't convince me that it was not a sale in what we would have to term the ordinary course of business, even though it violated the purpose, because I think in doing business you have to assume some hazards of doing business. There is some risk in doing business."

In regard to the thoughts of the venturers at the time of acquisition of the property, as to what they would do if they should fail to get the zoning and financ-

ing they needed for development for rental, the trial court made the following finding [R1. 26, lines 4-8]:

> "The venturers realized that they had made a good purchase price-wise and, if they were unable to obtain acceptable construction financing or rezoning from 'R-3' to 'C-2' which would be prerequisite to Commercial development, they would sell the property in bulk *so they wouldn't get hurt.*" (Italics supplied.)

Such a sale because of failure to obtain acceptable financing or rezoning was, as testimony recited by the court below showed, "always a possibility in real estate development".

The trial court, on the basis solely of the aforementioned possibility of sale by the venturers "so they wouldn't get hurt", included, as one of its conclusions of law, a statement that the property was held for "development or sale, depending on which course appeared to be most profitable." [R1. 28, lines 28-29]. The trial court also attempted to buttress that conclusion of law by including a finding to the same effect. Proceeding from that conclusion, it reached its final result—that the holding was "primarily for sale to customers in the ordinary course of trade or business"—by relying on the meaning of the term "primarily" announced by the court below in *Rollingwood Corporation v. Commissioner,* 190 F. 2d 263 [R1. 28, lines 23-27].

In the *Rollingwood* case the court below had defined the term "primarily" to mean "essential" or "substantial", 190 F. 2d at page 266. Herein the court below, sustaining the trial court on the basis likewise of *Rollingwood,* applied the term "primarily" as meaning that there could be a "dual purpose", which it ex-

plained as two or more purposes "all of which were substantial reasons" for which the property was held.

The court below, in the course of applying the *Rollingwood* view herein, referred to the case of *Municipal Bond Corporation v. Commissioner,* 341 F. 2d 683, with the notation, "Cf." In the latter case, decided February 18, 1965, the Eighth Circuit reversed the Tax Court, 41 T.C. 20, which had expressly, page 29, relied on the *Rollingwood* view. As the conclusion of its reasoning, however, the court below herein seemed to escape into a different position; for it said, as to the two sales herein involved, that "when taxpayer resolved to sell," that purpose, to sell, "*became* the primary purpose" (Italics supplied).

Reasons for Granting the Writ.

1. The principal reason for granting the writ consists of a direct conflict of the circuits on the meaning of the phrase "held primarily for sale" as used in I.R.C. 1954 (28 U.S.C.) §1221(1). In that conflict, directed particularly to the word "primarily", the court below and the Second Circuit (*S.E.C. Corp. v. U.S.,* 140 F. Supp. 717, 719, affirmed per curiam, 241 F. 2d 416) range on one side, and the Eighth Circuit (*Municipal Bond Corporation v. Commissioner,* 341 F. 2d 683) and the Sixth (*Gotfredson v. U.S.,* 303 F. 2d 464, 468) on the other.

The position of the court below, and of the trial court, is that the property involved was held for a "dual purpose", by which it meant two purposes, one being development for rental income, and the other, sale to customers in the ordinary course of trade or business. The factual base for the latter purpose is solely the

awareness of the venturers, at the time of acquisition of the property, of the possibility that the requirements for development for rental income could not be fulfilled, in which case they would sell the property in bulk "so they wouldn't get hurt". The court below sustained the trial court's treatment of that possibility as an additional purpose in order to bring the case within the doctrine of *Rollingwood Corporation v. Commissioner,* C.A. 9, 190 F. 2d 263.

Accordingly to *Rollingwood,* what the term "primarily" in the statutory provision involved here means (taking in lieu of the adverb, "primarily", the adjective, "primary") is not "principal," but "essential" or "substantial." The Second Circuit, *S.E.C. Corp. v. U.S., supra,* agreed. The Eighth Circuit, however, on February 18, 1965, in *Municipal Bond Corporation v. Commissioner, supra,* at page 687, expressly and necessarily rejected that view, holding the term to mean instead "of first importance or principally." On May 27, 1965, just a week after the time for filing a petition for certiorari in that case expired, the court below rendered its decision herein, following the *Rollingwood* case.

The *Municipal Bond Corporation* case involved, as here, real estate, and, aslo as here, awareness by the taxpayers of a possibility of eventual sale. The Eighth Circuit there cited in its support the following: *Benitez v. Bank of Nova Scotia,* C.A. 1, 125 F. 2d 523; *McCaugh v. Electric Storage Battery Co.,* C.A. 3, 63 F. 2d 715, 717; *Bowles v. Nelson-Ricks Creamery Co.,*

D. Idaho, 66 F. Supp. 885, 888; *In re Day's Estate,* E.D. Ill., 10 F. Supp. 229, 231; *Friedman Textile Co. v. Northland Shopping Center, Inc.,* 321 S.W. 2d 9, 15; *State v. Erickson,* 182 N.W. 315, 317; also Webster's New International Dictionary and Bouvier's Law Dictionary. The Eighth Circuit there also challenged the entire notion of "dual purpose," citing the decision of the Sixth Circuit in *Gotfredson v. U.S., supra.* The latter case, at page 468, stated:

> "The trial court in instructing the jury with regard to 'dual purpose' took away from the jury the issue concerning the essential primary purpose for which the appellants herein held the cattle."

2. A second reason for granting the writ is another direct conflict of the court below, this one not only with other circuits, but also with itself. The court below herein said [R1. 50] that "when taxpayer resolved to sell . . . that purpose became the primary purpose." But it had previously been held that it is the purpose of holding, not the actual sale, which governs; that if the actual sale governed there could never be a capital gain. So the Fifth Circuit clearly held, in *United States v. Bennett,* 186 F. 2d 407, 410-411. So the Eighth Circuit did in *Municipal Bond Corporation v. Commissioner, supra,* at page 689. So, indeed, the court below did in *McGah v. Commissioner,* 210 F. 2d 769, at page 772. See also 3B Mertens §22.138, pp. 628-629. And the trial court herein, in its summary at the close of trial quoted above, stated that the sale here not only did not conform to the purpose, but that it *violated* the purpose.

Nor does awareness of the possibility of sale "so they wouldn't get hurt" creat a distinction. Such awareness appeared in both the *Bennett* and *Municipal Bond* cases cited above. Indeed, in the case here the court below itself observed, as noted in our "Statement" above, that in real estate development there was *always* the possibility that the requirements for development could not be fulfilled and the necessity of sale result.

3. Another reason for granting the writ is a conflict with decisions of this court and other circuits on another point. The conclusion of "dual purpose" herein—to hold "for development or sale, depending on which course appeared to be most profitable"—is not a finding drawn from the evidence; it is, in fact, clearly contrary to the evidentiary finding that if the necessary rezoning or financing could not be obtained the venturers would sell the property in bulk so they wouldn't get hurt. A purpose to sell if that is "most profitable" is in no way the same as a purpose to sell "so they wouldn't get hurt." Indeed, the two ideas are inconsistent. Thus the "dual purpose" conclusion here, if treated as a finding, is not one drawn from the evidence, but one induced by a view of the law, and therefore not a part of the facts at all. As a result the decision below is in conflict with the decision of this court in *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 394. It would also not be at all far-fetched to contend that this clear *non sequitur* is such a gross violation of simple logic as to constitute a violation of due process. *Tot v. United States*, 319 U.S. 463, 467,

63 S. Ct. 1241, 1245; *Colon-Rosich v. People of Porto Rico* (C.A. 1), 256 F. 2d 393, 397-8.

4. We submit also that the meaning attributed by the court below to the word "primarily" as used in the statutory provision involved is in conflict with ordinary business sense. We quote from the analysis of the opinion below in the familiar tax service of Rabkin & Johnson, in their Federal Taxation Report No. 276, July, 1965, as follows:

> "This decision erodes dangerously the mandate of the Code that the property be held 'primarily' for sale. Any sensible investor, prior to purchase, must consider the possibility that his investment will not prove up to expectation. If he is as fortunate as this taxpayer and knows that he has made a good purchase in any event, he is now relegated to ordinary income under this unrealistic rule of the Ninth Circuit."

5. A final reason for granting the writ is the importance of the issues involved in the administration of the revenue. As the citator of the Federal Reporter series shows, the case relied on herein by the court below, and from which the conflicts above cited stem, that is, *Rollingwood v. Commissioner, supra,* has been cited in connection with the points involved here in a long list of cases. It has so been cited in opinions of the courts and in dissenting opinions. It has been followed, it has been distinguished, it has been questioned, and it has been rejected. The situation is now one of such chaos that it can only be cleared up by a

decision of this Court. Moreover, the terms involved are still in the statute. Thus, the issue still remains as one of importance in the administration of the income tax, and not only for earlier, but for current taxable years. *The Colony, Inc. v. Commissioner,* 357 U.S. 28, 32.

Wherefore, petitioners pray that this Court issue the writ of certiorari sought herein to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

GEORGE T. ALTMAN,
Attorney for Petitioners.

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APPENDIX.

Opinion of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit.

William Malat and Ethel Malat, Appellants, vs. Robert A. Riddell, District Director of Internal Revenue, Appellee. No. 19,286.

[May 27, 1965]

On Appeal from the United States District Court for the Southern District of California, Central Division.

Before: Merrill, Duniway and Ely, Circuit Judges.

Merrill, Circuit Judge:

Profit derived from sales of property held by a taxpayer, primarily for sale to customers in the ordinary course of his trade or business, is, under section 1221 of the Internal Revenue Code of 1954,[1] excluded from treatment as capital gain.

This case presents the question whether real estate sold at a profit by one engaged in the business of dealing in real estate had, under the particular circumstances, been held by him as an investment or primarily

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[1]Section 1221, Internal Revenue Code of 1954, reads:

"Sec. 1221. Capital asset defined.

For purposes of this subtitle, the term 'capital asset' means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; * * *."

for sale to customers. Upon this issue the trial court has found against the taxpayer, ruling that the profit must accordingly be treated as ordinary income. We conclude that the District Court's finding is not clearly erroneous and affirm.

The case involves income tax for the year 1956. The taxpayer[2] had reported the gain on the transaction in question as capital gain. The Internal Revenue Service disagreed. A deficiency was assessed and was paid by the taxpayer. This suit for recovery followed.

Taxpayer at all times pertinent to this case was a member of Louis Lesser Enterprises, Ltd., a partnership (to which we shall refer as "Lesser"), which for some time as a business enterprise had been engaged in the purchase and development of real estate for rental.

In 1953 Lesser and four individuals not members of the partnership negotiated for the purchase of 44.901 acres of agricultural land, located at Century and Crenshaw boulevards in Inglewood, California. On August 12, 1953, they organized Century-Crenshaw Plaza as a joint venture, entered into agreement for purchase of the property for the sum of $486,000 and established an escrow for that purpose. At the time of the establishment of the escrow the land was zoned agricultural. A condition to the closing of the escrow was that it be rezoned as residential, and that a corner parcel retained by the seller, 600 x 600 feet, be rezoned as commercial. These changes in zoning were accomplished and the escrow was closed on February 15, 1954.

In the meantime the intentions of the venturers with respect to the land had undergone a series of changes.

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[2]William Malat is referred to as the taxpayer. His wife is joined since a joint return was filed.

At the outset, as taxpayer testified, they "had in mind" a garden-type apartment development of the entire property—a single-mortgage development, requiring no division of the property into separate parcels. This was contingent not only on their securing zoning changes (in which they were successful) but (since they were themselves in no position to finance the project) also on their ability to secure adequate financing. In this respect they first sought the assistance of the Federal Housing Administration but found that they could not secure FHA guarantees on terms acceptable to them. They next sought conventional financing. Their efforts, through mortgage brokers and savings and loan associations, failed. As taxpayer testified, "The mortgage market was very, very soft then, very tight." They then abandoned their original idea of a single-mortgage project. Taxpayer testified: "Our next thought was to build individual apartments, 4-, 6-, 8-unit buildings and finance each one with a separate mortgage." This involved carving out an inner parcel of 20 to 25 acres for the apartment buildings and retaining the two frontage areas on Century and Crenshaw boulevards for commercial use. A subdivision map covering the inner parcel was presented to the City of Inglewood and approved. For two reasons, this idea also had to be abandoned. The rezoning of the frontages could not be secured. Also, despite all efforts, the venturers were still unable to secure financing.

They were now faced with interest charges on their trust deed and with the cost of street improvements and like subdivision expenses. Taxpayer testified "So we took the next best route, * * * and proceeded to sell the lots, the individual lots in the subdivision." The

frontage parcels were retained, still in hope that commercial zoning could be secured as to them. The prospects of rezoning remained discouraging and a rift developed among the venturers; Lesser and two individuals "wanted to get out and be done with it." The other two wished to hold on. Eventually those who wished to get out, including Lesser, sold out their interests.

The gain which the venturers had realized on sale of the subdivision lots had been reported as ordinary income and is not here involved. Our sole concern is with the gain realized on the sale of the two frontage parcels.

Taxpayer contends that at no time had the venturers ever contemplated sale of these parcels until the rift among them brought about a change of plans; that at all times these parcels had been held for future development for the production of income; that when the subdivided lots had been sold the frontages were withheld from sale pursuant to original intent.

The Government contends that the prospect of sale was present from the outset, and constituted a primary purpose of the holding at the time of the sale. It points to the following testimony of taxpayer:

> "Q: Mr. Malat, at the time that you were considering the zoning potential and the development potential of this property, did you contemplate, in acquiring the property, the possibility that rezoning or refinancing, or whatever, might not be possible?
>
> A: This is always a possibility in real estate development
>
> Q: And what was your intention if that couldn't—I mean, you must have considered this as well.

A: Well, this was a bridge that we all felt we would cross when we came to it. We would first do the things—we felt that we had made a good buy on the property as far as price is concerned, so that if we couldn't do anything in the way of zoning, we would sell the whole thing off in bulk. We wouldn't get hurt. So, there was no urgency. There was no need to say, 'Well, if this doesn't happen, and that doesn't happen—' we took one step at a time."

The District Court, in its memorandum opinion, stated:

"It appears from the testimony of plaintiff read into evidence from his deposition, referred to above, that the property here in question was purchased with the thought in mind that if the rezoning or appropriate financing could not be accomplished that the parties 'would sell the whole thing off in bulk. We wouldn't get hurt.' "

And further:

"The rift between the partners may have expedited the sale but it appears that the failure to obtain rezoning and satisfactory financing was the primary cause of the sale which was the step intended by the parties to be taken at the time the property was acquired and while it was held, if the rezoning and financing failed. In other words, the property was purchased and held for development *or sale* depending on which course appeared to be most profitable, having in mind the need for rezoning and the availability of proper financing on reasonable terms."

The court concluded that at the time of sale of the frontages the properties were held with a dual purpose; that sale of the properties was an essential purpose. Relying on *Rollingwood Corporation v. Commissioner,* 190 F.2d 263 (9th Cir. 1951), it held taxpayer not entitled to capital-gain treatment.

Taxpayer seeks to distinguish *Rollingwood* on the ground that there the dual purpose was clearly fixed in a lease-or-option arrangement to which taxpayer was committed. Here, he asserts, the only "dual purpose" lies in his recognition, wholly consistent with investment, that sale might ultimately be felt to be more desirable financially than a continued holding for investment. Cf., *Municipal Bond Co. v. Commissioner,* 33 U.S.L.Week. 2465 (8th Cir. 1965).

We quite agree with taxpayer that an investor's prospective recognition of the fact that he may ultimately wish to realize on his investment is not enough to constitute sale a dual purpose of the holding. *Rollingwood* does not require such a result. We cannot agree with taxpayer, however, that this is such a case.

In such a case as this the purpose of the holding is undoubtedly difficult of ascertainment. Where an investment program has been followed through, it is there for all to see. Where it has been frustrated at the outset and resort is had to sale, the purpose of the holding at the time of sale is far more questionable. Was the sale a liquidation of an investment whose prospects had proved disappointing? To put the question another way, was it the exercise of a purpose *not* to hold rather than of a purpose to hold for sale?

In our judgment the answer in such a case must be found in the scope of the gain-producing purpose for

which the property was acquired and held. Two situations may be hypothesized to illustrate what we mean.

(1) If the purpose for which the property was acquired and held was solely and specifically to develop for rental; if it excluded the realization of gain other than in that fashion; and if such purpose was accompanied by an intent to liquidate (irrespective of consequent gain or loss) if this purpose failed, then a sale pursuant to such a program might well be regarded as nothing more than liquidation of a disappointing investment.

(2) If, however, the property was acquired and held with the purpose of realizing gain from it in any feasible manner which might present itself; if the owner stood ready to adapt his program to such changes as failing prospects might require and to realize gain wherever and however he could; then surely the realization of gain by sale is pursuant to the purpose of the holding. The taxpayer in such a case could be said throughout the course of his holding to have had several alternative purposes (all of which were substantial reasons for his holding within the *Rollingwood* definition of "primary"), each of which in turn actually became the primary purpose as efforts were concentrated in its direction.

The nature and extent of the gain-producing purpose is, of course, a factual issue. Whether in a particular case it falls on the investment-limited side of the line or on the all-encompassing side is a question of fact.

The District Court in substance has found that the scope of the taxpayer's intent was all-encompassing.[3]

[3]The District Court has found as fact that "The members of Plaza, as of the date the 44.901 acres were acquired, intended

In our judgment the record amply supports that finding.

In this connection we note first that it must be recognized that in the case of one who deals generally in real estate the rational inference is that the purpose of the holding was all-encompassing. The dealer is, after all, in the business of acting in precisely that fashion. Where an avowed purpose to invest (rather than hold for sale) has failed to materialize, the real estate dealer thus has a burden to meet in overcoming the inference that upon failure of the investment prospect the property sold had threreafter been held primarily for sale to customers in the ordinary course of his trade or business. See *Margolis v. Commissioner,* 337 F.2d 1001 (9th Cir. 1964).

While the nature of taxpayer's business was primarily that of development of real estate for rental, and he might therefore dispute the rationality of such an inference in this case,[4] still, the history of his holding provides ample support for the court's finding. That history demonstrates the many possibilities of gain possessed by the property (including subdivision and sale) which were in turn explored by the owners. At the outset taxpayer realized that the original plan might not work out. He would, he testified, cross that bridge when he came to it—take one step at a time.

Certainly it may be said (as the District Court in effect has said) that the purpose of the acquisition en-

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either to sell the property or develop it for rental, depending upon which course appeared to be the most profitable."

[4]It does not appear that the nature of the business of the joint venture, or of the venturers with whom taxpayer was there associated, was so limited. The inference may thus still retain its rationality as to this particular venture of the taxpayer.

compassed all of the steps which were successively taken, and that the primary purpose of the holding touched on each in turn. Sale, then, was not the liquidation of an investment. It was the final alternative in taxpayer's continuing efforts to realize gain from his acquisition. It was *part* of his plan rather than the abandonment of it.

Under these circumstances, when taxpayer resolved to sell, that purpose (which from the time of acquisition had been one of many alternative essential purposes) became the primary purpose and the property was primarily held for the purpose of sale.

Judgment affirmed.